

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA, )  
v. )  
RICHARD A. ORR, )  
Defendant. )  
Case No. 2:00CR10067  
OPINION  
By: James P. Jones  
Chief United States District Judge

*Richard A. Orr, Pro Se Defendant.*

The defendant, Richard A. Orr, has filed this pleading that I construe as a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (West 2006). Upon review of the motion and court records, I find that the § 2255 motion must be dismissed as successive.<sup>1</sup>

<sup>1</sup> Orr styles his pleading as a “MOTION FOR RELIEF AND JUSTICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(B).” The Federal Rules of Civil Procedure do not provide a vehicle by which a defendant may challenge his criminal judgment. *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998). Therefore, Rule 60(b)(6) provides no authority under which Orr may seek relief directly from the criminal judgment.

Orr includes on his pleading the case number assigned to his prior § 2255 action. While Rule 60(b) can provide authority for relief from judgment in a § 2255 action, a Rule 60(b) motion merely seeking to revisit a federal habeas court’s denial on the merits of previous claims for relief should be dismissed as a successive habeas petition to prevent petitioners from using such a motion to circumvent the rule against successive petitions. *Gonzales v. Crosby*, 545 U.S. 524, 531-32 (2005). Orr’s declaration that the court should not construe his submission as a successive § 2255 has no bearing on the court’s authority to do just that. *Id.* His submission is merely another attempt to bring a collateral attack on his conviction and is, thus, properly construed and dismissed as a successive § 2255 motion.

This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. *See* § 2255(h). Court records indicate that Orr previously filed a § 2255 motion concerning this same conviction and sentence, *Orr v. United States*, No. 7:02CV01101 (W.D. Va. May 19, 2004), *appeal dismissed*, No. 04-6962 (4th Cir. Dec. 6, 2004). As Orr offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion, I must dismiss his current action without prejudice. A separate Final Order will be entered herewith.

ENTER: July 1, 2010

/s/ JAMES P. JONES  
Chief United States District Judge